

**General Council Informal Consultations on External Transparency**  
**October 2000**  
**Submission from the United States of America**

The United States welcomes continued attention to the issue of transparency and looks forward to consultations planned by the Chairman to make tangible progress in this area. This contribution supplements earlier submissions of the United States.<sup>1</sup> Earlier discussions in the General Council have addressed communication among Members (“internal transparency”) and have resulted in improvements to our daily working environment. We believe that similar efforts are needed to improve communications between the WTO and the public (“external transparency”), given the increasing importance that trade and trade agreements play in the global economy and the commitment to sustainable development. Such efforts are essential to ensuring public understanding and support of the WTO’s work. Advances in external transparency will also help internal transparency, particularly for Members with smaller delegations in Geneva. Progress in this area is clearly needed and can be accomplished while preserving the government-to-government character of the WTO, an institution driven by its Members.

The United States intends to work constructively with the Chairman and other WTO Members to build a consensus to improve external transparency. U.S. comments here are focused in two areas: first, ways to enhance timely access to information about the WTO at the national level and by Members acting collectively; and second, important mechanisms to ensure the credibility of the dispute settlement system. These include:

- C      sharing respective Member experiences of efforts to exchange information and views on developments in the WTO at the national level;
- C      further building upon the good work of the WTO Secretariat in developing the WTO website;
- C      begin opening the various WTO council and committee meetings on an experimental basis, including webcasting at least some meetings of the Trade Policy Review Body;
- C      building upon previous efforts to strengthen the 1996 Derestriction Decision, so that Members may consider experience to date and, as soon as possible, ensure that WTO documents that are most informative of WTO activities are circulated on an unrestricted basis or derestricted more quickly;

---

<sup>1</sup> In particular, see Communication from the United States concerning Preparations for the 1999 Ministerial Conference (WT/GC/W/139, 27 January 1999), page 5. Most recently, see Letter of Ambassador Rita Hayes to Ambassador Kare Bryn, Chairman, General Council, March 22, 2000.

- C strengthening the 1996 Guidelines on relations with non-governmental organizations, undertaking a regular program of seminars and symposia, and considering the outreach practices of other international organizations, to the extent they may be relevant; and
- C in the dispute settlement area, ensuring that all parties' submissions to panels and the Appellate Body are made available to the public, developing a mechanism to permit non-governmental stakeholders to present their views on disputes, and permitting the public to observe WTO panel and appellate proceedings.

## **I. Access to Information About the WTO**

### **A. National Activity**

In the 1996 Guidelines for Arrangements on Relations with Non-Governmental Organizations,<sup>2</sup> Members recognized that closer consultations and cooperation with the public can be met constructively through “appropriate processes at the national level where lies primary responsibility for taking into account the different elements of public interest which are brought to bear on trade policy-making.” While more external transparency in Geneva is essential, many delegations have stressed the importance of efforts at the national level. We share the view that more can and should be done to enhance dialogue at the national level, along with additional collective action by WTO Members.

The U.S. Government employs both informal and formal consultation processes to inform its policies with respect to the WTO. This year, for example, the U.S. Government twice solicited public comment in order to develop U.S. positions in the WTO, the first time with respect to the built-in agenda and the negotiations on services and agriculture, and the second with respect to institutional issues in the WTO, particularly the issues of transparency and outreach. The requests were published in the *Federal Register* and also circulated through our formal private sector advisory committees established under the Trade Act of 1974. These supplemented the normal U.S. practice of requesting public comment to prepare U.S. positions in WTO dispute settlement proceedings. Every time that the United States submits or receives a request for consultations pursuant to the WTO Dispute Settlement Understanding, the Office of the U.S. Trade Representative (USTR) solicits comment from the public regarding the matters in dispute. Submissions from the public in connection with all public comment procedures are made available in USTR's public reading room. USTR also recently expanded its website, with links to the WTO. The Uruguay Round Agreements Act, the U.S. implementing legislation for the Uruguay Round, mandated several other requirements, including annual reports on the major activities and work programs of the WTO. These are only some examples of activities at the national level to increase public understanding of the WTO and ensure that views of interested members of the public are taken into account.

---

<sup>2</sup> Decision adopted by the General Council on 18 July 1996 ( WT/L/162) (“1996 Guidelines”).

Broad-based domestic discussions of developments in the WTO and the responsibilities flowing from membership can help deepen understanding of the organization. This year, pursuant to Section 125 of the Uruguay Round Agreements Act, the President was required to report to the U.S. Congress on the operation of the WTO over the first five years. The U.S. Congress then undertook a statutory five-year review of U.S. experience in the WTO. The result was an overwhelming vote of support for the continued participation of the United States in the rules-based multilateral trading system. However, the area most singled out for criticism was the lack of transparency in the WTO's operations, particularly dispute settlement, and there was a serious concern that failure to address it would further erode public support for the institution. Accordingly, Congress urged the Administration to seek further transparency in the WTO and improve public outreach.

While there is no one-size-fits-all approach to consultation at the national level, all Members could benefit from an exchange of information on national experiences and approaches. Clearly there is a growing public interest in the work of the WTO, and such a sharing of information will be useful to Members in reflecting on how best to respond. Accordingly, the United States recommends that Members be invited to provide information on their respective approaches to providing their public with information and opportunity for input on developments in the trading system. We note that a number of accession applicants have found it useful to develop national websites focusing on their work to join the WTO. Sharing information in Geneva about respective national experiences should facilitate work at the national level, particularly in providing useful information to small and medium-sized enterprises about trade opportunities and issues of interest in the trade area.

## **B. WTO Information on Agreements and Ongoing Activities**

The WTO made important strides in 1996 when Members improved the process for derestricting some WTO documents after specified time periods<sup>3</sup> and recognized the importance of contacts with non-governmental organizations.<sup>4</sup> The process initiated by Singapore to advance outreach in preparation for the WTO's first ministerial was an important contribution to WTO Members' collective interaction and outreach efforts with the NGO community.

Subsequent meetings have shown the value of outreach efforts in broadening and informing the debate about the value of the WTO. The Secretariat has done excellent work in disseminating information about the WTO, briefing non-governmental organizations on the WTO's activities and informing Members when documents are received from NGOs. The WTO has also undertaken a series of seminars and outreach programs designed to examine issues on trade and the environment, development, electronic commerce and trade facilitation, to name only a few. Nonetheless, providing

---

<sup>3</sup> Procedures for the Circulation and Derestriction of WTO Documents (Decision adopted by the General Council on 18 July 1996) (WT/L/160/Rev.1) ("Derestriction Decision").

<sup>4</sup> 1996 Guidelines (WT/L/162).

timely information about WTO activities to interested members of the public, including small and medium-sized enterprises, remains a challenge. The following are some further immediate steps that could be taken to meet these challenges in the short term.

### ***Continued Improvements in the WTO Website***

We commend the Secretariat for the high quality of the WTO website and the staff's ongoing efforts at further improvement. We see this as a continuing activity to which WTO Members can contribute. The use of electronic means to provide information on issues and developments in the WTO is critical, particularly to the newly emerging economies and the development of small and medium-sized enterprises around the world.

Various WTO documents provide important information about the trade regimes of different Members, and should be of interest to traders around the world. Many are not readily accessed through the WTO website, however. The TPRM reports are currently published as books; making their executive summaries available on the WTO website would help their dissemination. Moreover, to the extent the WTO website does include unrestricted documents on its website, the ease of use could be improved. For example, while the document dissemination facility includes notifications of national legislation or regulations, only those aware of notification requirements in the WTO Agreements will encounter them easily. Improved mechanisms to locate and access such documents would do much to assist small and medium-sized enterprises interested in market access opportunities.

With the same purpose in mind – assistance to small and medium-sized enterprises – the website could also be structured so as to expand the array of information on individual Members' trade regimes (including the bound and applied customs duties for a given product, trade data and the trade agreements to which they are party). This kind of information is critical to traders around the world. We recognize that some of this information is not currently readily available, but at a minimum, the website could provide directories for obtaining information from Member governments or provide hyperlinks to Members' own national websites.

### ***Written Communications from WTO Members and the Secretariat***

While the Internet and the WTO's website have accelerated access to unrestricted documents, as a practical matter, many documents pertaining to the WTO's core activities are not made available to the public in a timely manner. The WTO's document policy falls short of what is needed to ensure that the work of the WTO is fully understood – and appreciated. Moreover, excessive restriction of access to WTO documents impairs the ability of Members to consult broadly at the national level.

The General Council agreement to review the potential for improving our 1996 Derestriction Decision permits us to proceed promptly, picking up from efforts over the last year to strengthen the 1996 Derestriction Decision. A great deal of progress has been made, and it is now time to bring this

review to a successful conclusion. It should be possible for Members to agree, at a minimum, on the following changes in current practices.

- C Minutes of all formal council and committee meetings should be derestricted much more quickly than under the current practice which provides for consideration of derestriction only after 6 months.
- C Secretariat background notes, which provide factual information that is important to understanding issues being considered in the various WTO councils and committees, should normally be issued as non-restricted documents. These papers are often critical to obtaining helpful input in consultations with domestic constituencies in preparation for WTO meetings.
- C Dispute settlement panel reports should be made available to the public on a much more timely basis.

### ***Open Meetings of WTO Bodies***

The United States suggests that the General Council explore the convening of some of the WTO council and committee meetings as open to observers, just as the plenary sessions of the Ministerial Conference have been opened to observers. This can readily be accommodated while preserving the government-to-government character of the WTO. It may be helpful, as suggested by some other delegations, to have annual meetings of WTO bodies to which non-governmental organizations are invited, and to which they may make written submissions to contribute or respond to the WTO Body's analytical work. The United States urges the General Council to consider which council and committee meetings would lend themselves to more open practices on an experimental basis.

Perhaps no WTO meetings reveal more of the central mission of the WTO than those of the Trade Policy Review Body. The WTO has already recognized the importance to the public of the Trade Policy Review Mechanism. The final TPRM reports of both the government being reviewed and the WTO Secretariat are currently published in book form, and even the 1996 Derestriction Decision designated the minutes of the Trade Policy Review Body as unrestricted.<sup>5</sup> Neither these reports, however, nor the TPRB minutes, do full justice to the comprehensive and constructive interaction that takes place among the WTO Members in the exchange of views on a Member's trade policies within the framework of the numerous disciplines of the WTO Agreements. The United States very much supports Canada's suggestion that the General Council consider opening Trade Policy Review meetings as a general rule or at the initiative of the Member being reviewed. We welcome the suggestion that we explore use of webcasting these meetings.

---

<sup>5</sup> See also, Appraisal of the Operation of the Trade Policy Review Mechanism (WT/MIN/(99)/2), paras. 4 and 13.

## ***Outreach on Current Developments***

The General Council should consider how to strengthen the 1996 Guidelines for Arrangements on Relations with Non-Governmental Organizations, consistent with the WTO's government-to-government character. It is important that the WTO build upon experience to date and consider a variety of approaches. This could include greater use of the Internet, to reach small and medium-sized enterprises, and conducting regular symposia involving Members and interested members of the public, covering a broad range of subject matters relevant to the work of the WTO. The WTO should also consider establishing more formal channels of communication between the WTO and non-governmental organizations.

In considering how to strengthen the 1996 Guidelines, some comparative perspectives may be helpful. Aside from reviewing the WTO's own experience to date, Members may wish to consider the practices of other international organizations for guidance, where they may be relevant. Other organizations have a variety of experiences in their approach to outreach. We recommend that the Secretariat survey these organizations so that Members may engage in a more informed discussion of the merits and drawbacks of various approaches to outreach. In addition, as mentioned above, in line with the 1996 Guidelines, which highlight the importance of consultative processes at the national level, it may be useful for Members to exchange information on, and discuss, their experiences with such processes and the approaches they have found most helpful.

## **II. Dispute Settlement**

During formal and informal discussions among delegations regarding reform of the WTO dispute settlement procedures, the United States has advanced several proposals to improve the transparency of the dispute settlement process.

The WTO dispute settlement procedures should ensure that all parties' submissions to panels and the Appellate Body are made available to the public, include a mechanism to permit non-governmental stakeholders to present their written views on disputes, and permit the public to observe WTO panel and appellate proceedings. The United States has repeatedly proposed that WTO panels and the WTO Appellate Body allow interested persons, on a first-come, first-served basis, to attend their meetings with the parties and listen while the parties make their presentations. This could also be accomplished through alternatives such as audio and video taping and webcasting.

International bodies such as the International Court of Justice and the European Court of Justice have open hearings for government-to-government disputes. National courts also have open hearings. In each case, the court has rules that create and reinforce an atmosphere of decorum and seriousness. WTO panels could do the same. The core caseload of the International Court of Justice consists of matters that are essentially government-to-government in nature: maritime and land

boundaries, rights under treaties, and similar disputes about the rights and obligations of governments. The oral phase of ICJ proceedings takes place in open court in the Hague, and the fact that any interested party can attend has presented no interference with the government-to-government nature of the disputes the ICJ handles.

Greater openness in WTO dispute settlement proceedings would also benefit smaller Members and Members that are not frequently parties to disputes, because they could send their delegations to observe any dispute and gain knowledge about the particular dispute and know-how about the dispute settlement process. All WTO Members, as well as the general public, should have this opportunity.

Increased transparency of the dispute settlement process is critical to the future of the WTO. If WTO dispute settlement proceedings are to play the role of ultimate guarantor of the system, they must be open to observation by the public, and open to receiving input from the public. Openness of this sort is essential to ensuring public support for the legitimacy of WTO dispute settlement. As the WTO takes on more complex and controversial cases, there is an ever-increasing need for such transparency. The lack of openness and public access to WTO dispute settlement makes it harder – not easier – to settle disputes between WTO Members.

USTRANSP/FIN